

Re: AOR 1975-73

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1 MAR 1976

AOR 1975-73 issued as
OC 1975-125

OC 1975-125

Honorable James Martin
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Martin:

This responds to your request for an advisory opinion, which was originally processed as AOR 1975-73. Please accept my apologies for the inordinate delay in answering your questions. However, your inquiry involves controversial issues on which the Commission's final position has only recently materialized.

The Supreme Court recently held in Buckley v. Valeo, 44 U.S.L.W. 4127 (S.C. January 30, 1976), that the Commission as constituted could not be given statutory authority to issue advisory opinions. Although this part of the Court's judgment was stayed for 30 days, the Commission has determined that it will not issue further advisory opinions under 2 U.S.C. 5437f during the stay period. Thus, this letter should be regarded as an opinion of counsel, rather than an advisory opinion.

A. A Senior Citizens Conference

It is my understanding that every summer since becoming a Congressman, you have sponsored a Senior Citizens' Conference within your district. At the Conference, representatives from Social Security, Veterans Service Office, social services, city and county fire and police departments, State Office of the Aging and city and county officials answer questions which the elderly may have concerning the operation of their agencies and those services which they provide. In the past, local companies have donated refreshments, decorations and door prizes and have paid for mailings advertising the Conference. At this time, you anticipate holding a similar conference for the district's elderly in the summer of 1976.

MC sponsorship Senior Citizens Conference

Through further communication with your office staff, I have been informed that the event will be financed principally by legislatively appropriated monies. You inquire whether (i) use of privately donated monies to an office account, the "Booster Club" fund, are reportable expenditures and must be attributed to ceilings on campaign expenditures, (ii) corporate donations to the function are permitted, and (iii) a local Chamber of Commerce may volunteer a room in which to hold the conference.

1.. Use of Stationery Account Monies and Office Account Monies.

Section 431(f) of Title 2, United States Code, defines "expenditure" to mean:

"a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value . . . made for the purpose of influencing the nomination for election, or election, or any person to Federal office . . ."

I recognize that the Senior Citizens' Conference acts to inform the elderly of the benefits which they may derive from governmental services, and that, in sponsoring it, you may be fulfilling an important function of public office. However, the proximity of the Conference to the primary and general elections in North Carolina and your unambiguous identification as sponsor of the event may influence the audience to take affirmative action in support of your candidacy. Therefore, if you are a candidate, any disbursement to finance the Conference from the "Booster Club" fund or any other office account would, absent rebutting evidence, be treated as an expenditure made for the purpose of influencing a Federal election.

The Buckley decision invalidated the overall limitations in 18 U.S.C. §608(c) on campaign expenditures by Federal candidates in any election, except for presidential candidates who accept public funding in any election [Slip Opinion No. 75-136 at pp. 29-31]. Hence, unlimited disbursements may be made for the Senior Citizens' Conference from any office account. As these disbursements will be considered campaign expenditures under the Act, they are reportable pursuant to 2 U.S.C. §434.

On the other hand, the Commission has previously presumed any disbursement of congressionally appropriated monies to be necessary for continued performance of a Member's responsibilities. The Commission does not have jurisdiction over the regulation of your stationery account, where it contains only legislatively appropriated monies.

2. Corporate Contributions.

If you are a candidate for Federal office, any "in-kind" contribution of refreshments, decorations, door prizes or mailed advertising by any corporation, union or national bank shall be considered a "gift of anything of value . . . in connection with an election," and, therefore, in violation of 18 U.S.C. §610 [see, generally, Advisory Opinion 1975-14, 40 FR 34094].

However, a vendor, whether or not incorporated, may sell food and beverage for the Senior Citizens' Conference at cost, provided the cumulative value of the difference between normal or retail charge and the cost to the vendor does not exceed \$500 [18 U.S.C. §691(f)(4)(D); see also Advisory Opinion 1975-94, Federal Register, 41 FR 5752 (February 9, 1976)].

3. Chamber of Commerce Room.

In my opinion, the voluntary provision of a meeting room for the Senior Citizens' Conference by a local chamber of commerce, supported by corporate monies, would constitute an "in-kind" contribution prohibited by 18 U.S.C. §610. A donation of this sort is not akin to a purchase transaction in the sense in which the Commission viewed use of corporate monies for national nominating convention facilities. [See Advisory Opinions 1975-1 and 1975-47, Federal Register, 40 FR 29792.] As the presumption of commensurate commercial returns for corporate donations does not attach except in the context of the national nominating convention, such "in-kind" corporate contributions would be made in connection with an election, if you are a candidate for Federal office. However, public auditoriums, theatres, high school meeting rooms and other state owned facilities or facilities leased by the state at fair market value may be offered without charge.

B. Transportation Expenses to District for Public Appearances

You further inquire whether travel expenses to and from your district for addresses before public groups may be paid by such groups or from a stationery account or the "Booster Club" Fund.

Either direct payment or reimbursement of travel expenses by an unincorporated civic group, made in connection with addresses within your district, will be treated as a contribution, reportable and attributable to the limits of 18 U.S.C. §608(b), if you are a candidate under the Act. The Commission has already determined that, if a Federal official is a candidate for Federal office at the time that he makes an appearance or speech before an audience which is comprised in substantial part of individuals from his electorate, payment of travel expenses incident to the appearance will be considered a contribution. See Advisory Opinions 1975-8, 1975-13, 1975-20, and 1975-63, copies of which I enclose.

As such an appearance or speech is presumed to be campaign-oriented, related travel paid from the "Booster Club" fund, or any other office account containing privately donated monies, will be treated as reportable expenditures. Expenses incurred by a candidate for U.S. Senate or House of Representatives for travel between Washington, D. C., and the state or district in which he/she is a candidate need not be reported as expenditures if the expenses are paid by a candidate from personal funds or from legislatively appropriated monies. [See §107.5(d) of the Proposed Regulation on Allocation and §113.1 of the Proposed Office Account Regulation.]

This response constitutes an opinion of counsel which the Commission has noted, with objection by Commissioners Aikens and Thomson.

Sincerely yours,

Signed: John G. Murphy, Jr.
John G. Murphy, Jr.
General Counsel

Enclosures

DSkover:bjm:2/27/76
cc: Docket Section (I/C #278& 279)
JGM
BL
DSkover